



MINUTES

**CITY OF SCOTTSDALE
PERSONNEL BOARD
Regular Meeting**

TUESDAY, NOVEMBER 24, 2009

**HUMAN RESOURCES VERDE ROOM
7575 E. MAIN STREET**

PRESENT: Armando Flores, Chairperson
Lyle Ferger
June Cohen (left at 5:04 p.m.)

STAFF: La Verne Parker Diggs
Velicia McMillan
Eric Anderson
Valerie Wegner
Bernadette LaMazza
Michelle Ruiz

CALL TO ORDER

Chair Flores called the Personnel Board regular meeting to order at 3:39 p.m. Roll call confirmed the presence of Board members as noted.

1. APPROVAL OF MINUTES OF PUBLIC MEETING CONDUCTED ON APRIL 16, 2009.

BOARD MEMBER FERGER MOVED TO APPROVE THE PUBLIC MEETING MINUTES OF APRIL 16, 2009. BOARD MEMBER COHEN SECONDED THE MOTION, WHICH CARRIED BY A UNANIMOUS VOTE OF TWO (2) TO ZERO (0). BOARD MEMBER COHEN ABSTAINED.

2. INTRODUCTION OF NEW BOARD MEMBER

Board Member Cohen gave a brief history of her background; the Board welcomed her and thanked her for her service.

Valerie Wegner informed Board Member Cohen that staff has put together a New Board Member Notebook, which will be given to her after the meeting.

3. DISCUSSION OF PERSONNEL BOARD HEARING/MEETING SCHEDULE

Bernadette LaMazza explained this item was placed on the agenda in order to establish a regular schedule for the Board.

Ms. Wegner explained that in the past, Board Members have held the second Tuesday of each month open on their calendars in the event that there was an appeal.

All Board Members agreed to maintain the existing practice of holding the second Tuesday of each month open, recognizing that if there is a conflict it could be changed.

Chair Flores asked that any communication regarding a scheduled hearing go out as soon as possible in order to facilitate planning.

Ms. Wegner stated staff would know at least two weeks in advance whether a meeting needed to be scheduled. An email notification will be sent two to three weeks in advance informing the Board whether a meeting will be held. Occasionally a meeting is called when there is no appeal to be heard.

4. REVIEW OF PERSONNEL BOARD RULES AND PROCEDURES AND CONSIDERATION OF RECOMMENDED REVISIONS

Eric Anderson indicated he had conferred with Assistant City Attorneys Jay Osborn and Cliff Frey regarding the role of the legal advisor to the Board. Some proposed rule changes were drafted based on those discussions. The proposed rule and procedure changes have been included in the Board's packet.

Mr. Anderson pointed out the proposed change to Rule 2.3(B), which was added in an attempt to clarify the issue of how and when employees should appear. The proposed change identifies the designated liaison to the Board as the individual who would excuse an employee, should a potential witness request to be excused from a hearing. The entire Board could make that decision; however, Mr. Anderson noted that he did not recommend that alternative for logistical reasons.

In response to an inquiry by Board Member Ferger regarding the definition of a witness and appearance requirements for employees, Mr. Anderson explained the rules adopted for the Personnel Board do not apply strict court rules of evidence. The Board or Chair may decide whether or not a witness has relevant testimony that might be probative. The standard requires the evidence to have some probative value to the issue.

Chair Flores said the language appears to be somewhat soft and leaves room for discretion. He asked whether the City could compel someone to appear, especially in a case where they are 100 percent resistant to participating. Mr. Anderson answered that in adopting the Code, the City Council has said that employees are expected to cooperate with the Board. Conceivably, it could come back to the Board as a disciplinary matter with that employee. Ms. LaMazza indicated that would not be a condition of employment for an employee; rather, that employee would most likely go through the progressive discipline process.

Chair Flores clarified that while employees are expected and encouraged to cooperate, they cannot be forced to appear at a hearing if they are subpoenaed.

Ms. Cohen said while it is not a condition of employment, progressive discipline is, in some way, making it a condition of employment. Ms. Parker Diggs stated that the progressive discipline process does not necessarily always end in termination.

Ms. LaMazza indicated the Board did have a case where an employee subpoenaed several employees to appear as witnesses, and the employees told him they did not want to appear because they were unclear as to why they were being called. That particular employee ultimately ended up withdrawing his appeal.

Chair Flores noted that in past hearings the opposite actually seemed to occur, where multiple witnesses have testified on behalf of an employee's performance and character. He indicated that he believes a witness should add value or needed value to a fact-finding situation, and stated he would rather have the attorneys stipulate to the integrity of the individual at the start of the hearing.

Mr. Anderson added that the Chairperson does have authority to make evidentiary rulings to guide the hearing. There is a rule regarding repetitive or non-pertinent evidence, and that could be applied at the Chair's discretion.

Chair Flores stated his tendency would most likely be to be more flexible than rigid, until it is clear that there is an issue that should be addressed. It is important for the Board to leave a hearing with the feeling that the individual who filed the appeal has had his or her full, equitable hearing.

In regard to the proposed Rule 2.3(B) change, Chair Flores stated he is comfortable with the HR liaison making decisions regarding the appearance of employee witnesses. Mr. Anderson clarified that the language could be changed to require the liaison consult with the chairperson on the matter.

Board Member Cohen asked how often the rules are revised. Mr. Anderson stated the rules were last changed and adopted by the Board two years ago. There is no set process at this time, and any member of the Board could propose a rule change and ask that it be placed on the agenda for consideration. The Personnel Board is a unique board within the City, and other boards generally do not subpoena witnesses.

Board Member Cohen asked whether staff ever gathers input from the attorneys who have to follow these rules. Mr. Anderson indicated that he spoke to several attorneys who have been involved in the process in the past.

Board Member Cohen asked if the Board ever gathers input from the appellants after the hearings are held. Ms. LaMazza said there is currently no formal process in place; however, participating employees have given their feedback in the past. Employees who are going through the appeals process are encouraged to attend a hearing, if possible.

Ms. Wegner reminded the Board that they have a hearing next week, and asked that they take that into consideration when making their motions to make rule changes. She suggested the changes take place after December 2 in order to give everyone time to prepare. Mr. Anderson suggested the effective date for any rule changes be December 7, 2009.

Ms. Wegner noted that "Managing Executive Director" appears in Mr. Anderson's packet, and stated that title has changed since the packet was put together. She asked

that the word "Managing" be removed from the Executive Director title wherever it may appear.

BOARD MEMBER COHEN MOVED TO APPROVE A CHANGE IN RULE 1.3, CHANGING "MANAGING EXECUTIVE DIRECTOR" TO "EXECUTIVE DIRECTOR OF HUMAN RESOURCES." BOARD MEMBER FERGER SECONDED THE MOTION, WHICH CARRIED BY A UNANIMOUS VOTE OF THREE (3) TO ZERO (0).

BOARD MEMBER COHEN MOVED TO MAKE THE EFFECTIVE DATE OF NEW PERSONNEL BOARD RULES DECEMBER 7, 2009. BOARD MEMBER FERGER SECONDED THE MOTION, WHICH CARRIED BY A UNANIMOUS VOTE OF THREE (3) TO ZERO (0).

BOARD MEMBER COHEN MOVED TO AMEND THE PROPOSED CHANGE TO RULE 2.3(B), ADDING A STATEMENT THAT THE DESIGNATED LIASION TO THE PERSONNEL BOARD FOR HUMAN RESOURCES SHALL THEN DECIDE, AFTER CONSULTATION WITH THE CHAIRPERSON, WHETHER OR NOT GOOD CAUSE EXISTS FOR THE CITY EMPLOYEE TO BE EXCUSED FROM PARTICIPATION IN THE HEARING. BOARD MEMBER FERGER SECONDED THE MOTION, WHICH CARRIED BY A UNANIMOUS VOTE OF THREE (3) TO ZERO (0).

BOARD MEMBER COHEN MOVED TO ADOPT THE PROPOSED PERSONNEL BOARD RULES, AS AMENDED BY PREVIOUS MOTIONS, EXCLUSIVE OF COMMENTS ADDED FOR CLARIFICATION. BOARD MEMBER FERGER SECONDED THE MOTION, WHICH CARRIED BY A UNANIMOUS VOTE OF THREE (3) TO ZERO (0).

Board Member Ferger asked for clarification regarding pre-hearing motions. Mr. Anderson explained a pre-hearing motion might be to exclude a witness or documents, or to continue a hearing. He explained the legal term "dispositive motion" was added based on his conversation with Mr. Osborn, which means a motion that would decide something on the merits of the case.

Board Member Cohen asked whether the fact that only two Board Members would be hearing the December 2 case would change the procedures, and Mr. Anderson indicated it would not.

In response to an inquiry by Board Member Cohen, Chair Flores indicated there is an outline to use as a guide for hearings that he could provide to guide her through her first hearing.

Board Member Ferger asked for clarification regarding the procedures in case of a tie vote at the December 2 hearing. Mr. Anderson stated the Board can deliberate in executive session, but the decision needs to be public. Generally the entire hearing, including deliberations, is held during a public session; however, there have been cases where portions of the hearing have been held in executive session in order to protect the privacy of the appellant.

The Board agreed to make a procedural change during the December 2 hearing, allowing the Chair to discuss his findings before Board Member Cohen.

In response to an inquiry by Board Member Cohen regarding the final decisions of the Board, Ms. LaMazza stated the City Manager has always gone with the recommendation of the Board, with one exception. The Board has gone against the City's decisions twice.

Board Member Cohen noted there were not many hearings last year. Ms. LaMazza replied that there were a lot of withdrawals. Chair Flores stated an employee could withdraw their appeal right up to the minute before the hearing starts.

Board Member Cohen asked how many cases are in inventory. Ms. LaMazza said there are currently only two; one in December and one in January. Chair Flores stated that is no indication of whether or not a hearing will take place. Many cases are cancelled or continued. Ms. Wegner clarified that Board Members receive hearing notebooks approximately a week before the hearing, which contains the agenda, the witness list, and order of proceedings, as well as appellant and respondent's witness and exhibit books.

In response to an inquiry by Board Member Ferger, Mr. Anderson said the information regarding a hearing is part of the public record. Since Board Member Ferger is recusing himself from the December 2 hearing, he cannot participate in the Board decision.

Board Member Cohen asked whether Chair Flores' decisions regarding pre-hearing motions would be communicated to the rest of the Board. Mr. Anderson replied that HR staff could communicate any decision material to the case. Dr. McMillan indicated Chair Flores is a very transparent individual; the Board can trust that he would share any pertinent information.

Mr. Anderson clarified that the Board should not let historical data or anecdotal evidence guide their decisions. Decisions should be made purely based on what is heard in any given hearing. Board Members should not feel they must uphold the City if they do not feel its decision is correct.

5. PUBLIC SERVICE ETHICS TRAINING FOR APPOINTED CITY OFFICIALS

Mr. Anderson indicated that Board Member Cohen just completed full ethics training. Chair Flores and Board Member Ferger decided to complete the ethics refresher training at home via a DVD, due to technical difficulties.

6. FUTURE AGENDA ITEMS

None noted.

ADJOURNMENT

With no further business to discuss, the meeting adjourned at 5:12 p.m.

Respectfully submitted,
Bernadette LaMazza
HR Manager

Reviewed by
Armando Flores
Chairperson, Personnel Board